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VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554


Re: ET Docket No. 97-157

Dear Ms. Salas:

On behalf of Davis Television Fairmont, LLC, applicant for a construction permit for a new television broadcast station to operate on Channel 66 at Fairmont, West Virginia, I am transmitting herewith an original and eleven copies of its Petition for Reconsideration in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned counsel.

Very truly yours,



Ross G. Greenberg

RGG:rg
Enclosures

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Reallocation of Television Channels) ET Docket No. 97-157
60-69, the 746-806 MHz Band)

To: The Commission

PETITION FOR RECONSIDERATION
OF DAVIS TELEVISION FAIRMONT, LLC

Davis Television Fairmont, LLC ("Davis"), applicant for a construction permit for a new television broadcast station to operate on Channel 66 at Fairmont, West Virginia (FCC File No. BPCT-960920IY), hereby petitions the Commission to reconsider its Report and Order in the above-captioned proceeding, adopted December 31, 1997, and released January 6, 1998, 63 Fed. Reg. 6669 (1998) (the "Report and Order").^{1/} On October 14, 1997, Davis filed reply comments (the "Reply Comments") in this proceeding, urging the Commission to foster competition and encourage the provision of new over-the-air television service in Fairmont. Reply Comments at 2. Specifically, Davis requested that the Commission take decisive steps to protect those applicants already on file for Channel 60-69 allotments and employ the greatest degree of flexibility possible in the means by which it protects these applicants. *Id.* Davis

^{1/} The Report and Order was published in the Federal Register on February 10, 1998. Accordingly, this Petition for Reconsideration is timely filed. 47 C.F.R. § 1.429(d) (1996).

believes that the Report and Order, while “taking a step in the right direction,” has not adequately addressed this plea and has not provided necessary protection for Davis’ application for a construction permit.

A central, laudable goal of the Report and Order is to try to accommodate displaced applicants for new television stations on Channels 60-69. After recognizing that, inter alia, “new stations would help to foster competition between networks,” the Report and Order states, “[W]e will at a later date provide applicants and petitioners an opportunity to amend their applications and petitions, if possible, to seek a channel below channel 60. We will thereafter dismiss any applications or allotment petitions that are not satisfactorily amended.” Report and Order at ¶ 40.^{2/} Giving displaced applicants an amendment opportunity partially responds to the dilemma created by the Report and Order. Stating that the Commission will dismiss any application for which an applicant cannot secure a viable channel below channel 60, however, is unnecessarily restrictive and inequitable, in effect penalizing those applicants who, through no fault of their own, applied for channels in television markets where substitute channels do not exist.

Unfortunately, that is the scenario Davis now faces. Unable to locate a viable analog channel under Channel 60 on which it may operate, Davis now confronts the possibility held out by the Report and Order that the time, money and effort it has expended in locating and applying

^{2/} The limited nature of this relief appears to have been premised at least in part on the assumption that new applicants had no digital future beyond the year 2006. See Report and Order at n. 84 and accompanying text. The Commission has, however, in the meantime taken significant, welcome steps to ensure a digital future for pending applicants like Davis. See Memorandum Opinion and Order on Reconsideration of the

for a construction permit and then reaching a settlement agreement with a mutually exclusive applicant may all have been for naught. The Commission's willingness to allow an amendment opportunity to displaced applicants is driven in part by its "aware[ness] of the investment in planning, effort, and money that have been put into [such] applications." Report and Order at ¶ 40. The Commission should broaden its vision to allow alternative ways to prevent such time and resources from being wasted unnecessarily.

Davis accepts the importance of the reallocation of television channels 60-69 and does not here generally challenge the Commission's decision ultimately to reallocate these channels. Nonetheless, Davis believes that, as a timely applicant for a channel between Channels 60-69, it is entitled to maximum flexibility in the processing and granting of its application, within the reasonable confines of the public interest. Davis has therefore fashioned below a scheme that satisfies the goals and requirements of the Commission while affording Davis an opportunity to bring new television service, a first local service, to the community of Fairmont.

Davis offers several options. First, as its preferred option, Davis proposes specialized relief in the highly unusual circumstances that characterize its particular situation. According to the Engineering Statement of Bernard R. Segal, P.E. (the "Engineering Statement"), a copy of which is attached hereto as Exhibit A, based on certain articulated assumptions, "no alternate channel [to Channel 66] either below or above Channel 60 is available" to Davis. Engineering Statement at 2. However, Channel 66 "has been determined to be the channel that has the least impact on any DTV allotment or land mobile set aside while yet affording an analog operation at Fairmont that is close to that envisioned" in Davis' application. Id at 2-3. And while Davis'

analog facility would receive an acceptable amount of interference, the interference *caused* by its operation would be de minimis. In fact, “only one spacing short-fall occurs and that is with respect to the Weston, West Virginia, DTV Channel 58 allotment.” Id at 4. The resulting interference caused to the Weston DTV station would be limited to 335 persons in 20 square kilometers, a tiny fraction of the 571,335 persons within the 24,430 square kilometers encompassed within the Grade B contour of the Weston station. Id at 5. By contrast, grant of the requested relief will bring new service to nearly 300,000 viewers. Id.

The Commission should allow Davis to operate its analog facility on Channel 66 as proposed until the end of the DTV transition period, when new channels below 60 become available. It should be noted that under Davis’ suggested plan, there will be no “impact on the use of Channels 63, 64, 68 and 69 for public safety purposes.” Id at 6. In fact, the operation of Davis’ facility on Channel 66 would not differ from what the Commission is permitting incumbent Channel 60-69 analog full-service licensees and permittees to do, except that a paired DTV channel would not yet be associated with Davis’ operation. Davis’ proposal offers the same essential public interest benefits as the Commission’s decision to allow these incumbent stations to broadcast throughout the DTV transition period. Other than the negligible interference caused to the DTV signal on Channel 58, only Davis bears the risk of any interference (at acceptable levels), while the public reaps the benefits of additional service to the broadcast area at the earliest possible time.^{3/}

^{3/} Davis would construct its station expeditiously and would abide by any reasonable construction deadline established by the FCC. See, e.g., Report and Order at ¶ 35. In
(continued...)

In the alternative, should the Commission not wish to adopt Davis' preferred solution, the Commission should liberalize spacing limitations for analog allotments in unusual cases like Davis'. Davis is not asking the Commission to alter its spacing limitations in all cases but only those in which such measures are warranted, where an applicant would otherwise be forced to forfeit its application for lack of another viable channel. Such cases are few in number and should not adversely impact other broadcasters. Allowing minor waivers of the Commission's strict spacing rules in congested markets could mean the difference between operation and forfeiture for certain applicants. For instance, a relaxation of these rules might allow Davis to operate on Channel 55 rather than relinquish its application. Engineering Report at 2. Liberalization of the spacing requirements is not unprecedented, as the Commission employed similar measures in allotting DTV replication channels for eligible licensees and permittees.

A third alternative is to allow Davis the opportunity to identify and operate on a digital television channel without first broadcasting in analog.^{4/} This would further the goals of both Davis and the Commission by allowing Davis an opportunity to find a viable channel on which to broadcast and by introducing a first local digital television operation to Fairmont, thereby

^{3/}(...continued)

turn, Davis asks that the Commission act expeditiously on this proposal. By already settling with the only other applicant for Channel 66 at Fairmont, Davis has put itself in position to construct the new station at the earliest possible time.

^{4/} Davis clearly prefers, however, the opportunity to broadcast in analog during the transition period, currently set to expire in 2006. It is uncertain when enough members of the viewing public will have acquired the digital receivers necessary to make digital broadcasting viable and Davis wishes to commence broadcasts at the earliest possible time.

increasing local competition and expanding service to the public. The Commission has already recognized the inherent wisdom of allowing, under special circumstances, new stations to make immediate and complete transitions to DTV upon construction, so that licensees need not operate both digital and analog facilities. See Memorandum Opinion and Order on Reconsideration of The Sixth Report and Order In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, MM Docket No. 87-268, at ¶ 56. Such an approach has therefore already been endorsed by the Commission and may be well-suited to Davis' situation.

As a "last resort" solution, if a replacement DTV channel could not be identified, the Commission should put applicants like Davis on a "priority waiting list" to receive DTV allotments as analog channels are turned in during the DTV conversion process. The Commission need only hold in abeyance the few applicants in Davis' situation until an opportunity to secure channels arises. To applicants like Davis, such a plan could mean the difference between procuring a channel and never getting an opportunity to broadcast at all.

In addition to the expenditures associated with the preparation, filing and prosecution of its application, Davis has invested time, money and effort in settling with the other mutually exclusive applicant for channel 66 in Fairmont, a settlement agreement that has been presented to the Commission for approval, and a copy of which is attached hereto as Exhibit B. Recognizing the difficult situation the Report and Order has created for Channel 66, this settlement agreement does not require Davis to immediately procure a viable alternative channel below Channel 60. Rather, Davis has substantial latitude in deeming any relief that the Commission might grant it as

a result of this reconsideration petition sufficient. Davis urges the Commission to grant it the preferred relief outlined at pages 3-4 above. Such relief would be entirely consistent with the mandate of the Balanced Budget Act of 1997, under which the Commission was directed by Congress to waive its rules in order to permit the effectuation of settlement agreements entered into by February 1, 1998, by mutually exclusive applicants for new facilities. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses, FCC 97-397, released November 26, 1997. The Commission has been directed to waive rules and policies that stand in the way of such settlements, and this Petition gives the Commission a vehicle to do so in the case of Channel 66 at Fairmont.

Davis makes its request in an effort to put all applicants for construction permits to operate on Channels 60-69 on a level playing field, so that all such applicants benefit equally from the Commission's desire to provide viable alternatives to the channels for which they have applied. Davis merely seeks a chance to make its proposed new station at Fairmont a reality, a chance that the Commission has given to other, similarly situated applicants. Davis is not requesting a sweeping change in Commission policy but only a narrowly targeted, effective solution to its dilemma. The Commission has consistently made clear its desire to facilitate the introduction of new services, increase competition and bring to the public the widest possible variety of programming. See also 47 U.S.C. § 307(b). By implementing Davis' suggestions and ensuring broadcasting opportunities for *all* applicants, the Commission may accomplish these goals and thereby clearly further the public interest.

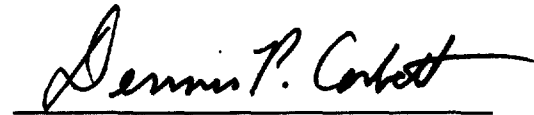
CONCLUSION

As this Petition demonstrates, there is no adequate public interest reason for placing Channel 66 at Fairmont on the edge of extinction. To the contrary, there are multiple, compelling reasons why the channel should be preserved. Some measure of additional flexibility on the Commission's part is all that is required. Davis has suggested alternatives, in priority order, that can preserve this important new, first local, over-the-air television service. The substantial public interest benefits of Davis' solution clearly outweigh the minimal costs, and Davis respectfully urges the Commission to grant the requested relief.

Respectfully submitted,

DAVIS TELEVISION FAIRMONT, LLC

By:



Dennis P. Corbett

Ross G. Greenberg

Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, N.W.
Suite 600
Washington, DC 20006-1809
202-429-8970

March 12, 1998

Its Attorneys

EXHIBIT A

ENGINEERING STATEMENT OF BERNARD R. SEGAL, P.E.

ORIGINAL

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

**ENGINEERING STATEMENT
PREPARED FOR
DAVIS TELEVISION FAIRMONT, LLC
FAIRMONT, WEST VIRGINIA
CH 66- 1510 KW (MAX, BT) 263 METERS**

ENGINEERING STATEMENT

Davis Television Fairmont, LLC (hereafter, Davis) is the applicant in BPCT-960920IY for a television construction permit at Fairmont, West Virginia. The proposal specifies operation on Channel 66-with peak visual effective radiated power of 1510 kW (MAX, BT) and antenna radiation center height above average terrain of 263 meters. This engineering statement supports a petition for reconsideration of the FCC's Report and Order in ET Docket Number 97-157 in the matter of Reallocation of Television Channels 60-69, the 746-806 MHz band.

The Report and Order mandates that no new analog full-service television stations will be authorized on Channels 60-69. An opportunity to seek a channel below 60 will be afforded and the criteria for effecting such a change are to be announced. On the assumption that the "to be announced" criteria will

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Davis Televison

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incorporate the existing criteria for analog to analog minimum separations set forth in Section 73.610 and the new DTV to analog constraints set forth in Section 73.623(d)(2), no opportunity for a new channel allotment for Fairmont's Channel 66 will be possible. As demonstrated herein, for the particular instance involving Fairmont, no alternate channel either below or above Channel 60 is available unless the FCC permits relaxed criteria for replacement analog allotments as were employed for the allotment of DTV replication channels for the transition eligible stations and construction permits.

In the absence of knowledge of what the "to be announced" criteria will be, an assumption has been made that adherence to the minimum separations included in Section 73.610 and 73.623 would be required. In that event, no analog allotment for Fairmont would be possible. Davis seeks reconsideration which would permit a grant of its pending application for an analog facility on Channel 66.* Channel 66 fulfills Section 73.610 analog minimum separation requirements and has been determined to be the channel

*If the "to be announced" criteria include a provision which allows for some modest short-spacing coupled with a ceiling on permitted new interference that may be caused, the prospect for finding a below Channel 60 substitute for Channel 66, would be enhanced. Channel 55 appears to be a potential prospect.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Davis Television

Page 3

that has the least impact on any DTV allotment or land mobile set aside while yet affording an analog operation at Fairmont that is close to that envisioned in the currently pending Davis application.

Figure 1 is a channel by channel rundown which identifies at least one allocation constraint which precludes use of each channel at Fairmont. In many instances, more than one allocation factor would preclude use of the channel, but, generally, only one factor has been listed. For the purposes of the study of Figure 1, the geographic coordinates of the site specified in the pending Davis application were employed. The site is in Zone I. Only Channel 66 permits fulfillment of all analog spacing criteria while yet not severely impacting on the Sixth Report and Order DTV Allotment Table as modified in the Memorandum Opinion and Order on Reconsideration, albeit, a derogation of the DTV/NTSC n-8 taboo separation requirement of Section 73.623(d) would be involved.

Allowing the n-8 taboo spacing derogation of Section 73.623(d) would not be inconsistent with the many similar taboo spacing derogations included in the Sixth Report and Order DTV Table of Allotments for the eligible

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Davis Television

Page 4

licensees and permittees. Interference would be received by the Davis Channel 66 analog operation, but insignificant interference would be caused. The spacing derogation involves interference that would be well within the range condoned for eligible NTSC stations and eligible construction permits that were used in the preparation of the DTV Allotment Table.

On Channel 66, only one spacing short-fall occurs and that is with respect to the Weston, West Virginia, DTV Channel 58 allotment. Section 73.623, which deals with DTV applications and changes to DTV allotments, specifies that no DTV allotment or change in a DTV allotment will be permitted for a situation involving a Zone I UHF eight channel separation with respect to an analog station for distance separations between 24.1 kilometers and 80.5 kilometers. The Weston, West Virginia, Channel 58 DTV allotment is 38 kilometers from the proposed Fairmont analog Channel 66 site. If the "to be announced" criteria consider the constraints applicable in the reverse direction, i.e. analog changes with respect to the DTV allotment table, then no opportunity would arise for an analog replacement channel for Fairmont.

Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Davis Television

Page 5

Using the TA Services implementation of the FCC's methodologies for analysis purposes, it has been determined that the population within the proposed Fairmont, Channel 66, Grade B contour, as limited to actual service therein by the Longley-Rice prediction methodology, version 1.2.2, is 292,000 persons in 8,240 square kilometers. The interference that would be received from the digital Channel 58, Weston, West Virginia allotment is 17,000 persons in 540 square kilometers, representing 5.8 percent of the Longley-Rice interference-free Grade B population and 6.6 percent of the Longley-Rice interference-free Grade B area.

Because of the spacing derogation that would occur with respect to the Weston, Channel 58 allotment, an additional study was conducted to determine the extent of interference that would be caused to the Weston DTV allotment. According to the TA Services analysis, the Longley-Rice interference-free Grade B replication service for Weston, Channel 58, includes 571,335 persons in 24,430 square kilometers. The proposed Fairmont, Channel 66, analog facility would cause interference to 335 persons in 20 square kilometers, representing 0.06% of the 571,335 persons and 0.08% of the 24,430 square kilometer area that would be served without the Fairmont, Channel 66,

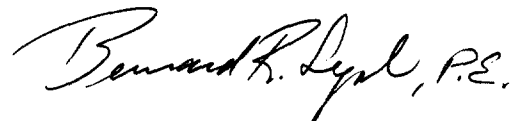
Bernard R. Segal, P.E.
Consulting Engineer
Washington, DC

Engineering Statement
Davis Television

Page 6

operation. The interference that would be caused is well within the 2% value that the FCC would allow for changes for existing licensed facilities and construction permits under the currently adopted rule provisions. The 10% overall interference limit is not an issue in this instance.

The use of channel 66 during the transition time will not impact on the use of Channels 63, 64, 68 and 69 for public safety purposes. The operation on channel 66 at Fairmont would be no different than what will be permitted for other incumbent channel 60-69 analog full-service stations except that a paired DTV channel will not be associated with the Channel 66 Fairmont operation. Davis is fully aware of the need to vacate Channel 66 at the end of the transition period. A potentially feasible DTV allotment below Channel 60 that fulfills Section 73.623 separation criteria has been identified so that when Channel 66 must be vacated, continuity of operation will be possible.



Bernard R. Segal, P.E.
March 10, 1998

Davis Television Fairmont, LLC
Engineering Statement

Figure 1
Sheet 1 of 3

Analog TV Channel Search For Fairmont, WV
Reference Coordinates: 39° 24' 51" North Latitude
80° 20' 45" West Longitude

<u>Channel</u>	<u>Comment</u>	<u>Separation</u>	
		<u>Actual</u> (km)	<u>Required</u> <u>Minimum*</u> (km)
2	KDKA-TV, Pittsburgh, PA	123	272.7
3	WHSV-TV, Harrisonburg, WV	174	272.7
4	WTAE-TV, Pittsburgh, PA	107	272.7
5	WDTV, Weston, WV	38	272.7
6	WJAC-TV, Johnstown, PA	158	272.7
7	WTRF-TV, Wheeling, WV	80	272.7
8	WWCP-TV, Johnstown, PA	133	272.7
9	WTOV-TV, Steubenville, OH	101	272.7
10	WTAJ-TV, Altoona, PA	207	272.7
11	WPXI-TV, Pittsburgh, PA	120	272.7
12	WBOY-TV, Clarksburg, WV	14	272.7
13	WQED, Pittsburgh, PA	119	272.7
14	Land Mobile, Pittsburgh, PA	118	250
15	WTAP-TV, Parkersburg, WV	105	248.6
16	WQEX, Pittsburgh, PA	119	248.6
17	WDLI, Canton, OH	178	248.6
18	WHIZ, Zanesville, OH	152	248.6
19	WNPA, Jeannette, PA	132	248.6
20	WOUB, Athens, OH	156	248.6
21	WFMJ-TV, Youngstown, OH	187	248.6
22	WPTT-TV, Pittsburgh, PA	126	248.6
23	Pending Appl. Charleston, WV	179	248.6
	WVPX, Akron, OH	211	248.6
	WNPB-TV, Morgantown, WV, Ch. 24	59.1	87.7
24	WNPB-TV, Morgantown, WV	59.1	248.6
25	WHAG-TV, Hagerstown, MD	206	248.6
	WNPB-TV, Morgantown, WV	59.1	87.7
26	DTV, Pittsburgh, PA	119	217.3

*Using Section 73.610 criteria for analog to analog situations and Section 73.623 criteria for analog to DTV situations.

Davis Television Fairmont, LLC
Engineering Statement

Figure 1
Sheet 2 of 3

<u>Channel</u>	<u>Comment</u>	<u>Separation</u>	
		<u>Actual</u> (km)	<u>Required</u> <u>Minimum*</u> (km)
27	WKBN-TV, Youngstown, OH	184	248.6
28	DTV, Clarksburg, WV	13	217.3
29	WKRP-TV, Charleston, WV	162	248.6
30	DTV, Jeannette, PA	132	217.3
31	WWPB, Hagerstown, MD	206	248.6
32	DTV, Wheeling, WV	80	217.3
33	DTV, Morgantown, WV	59	217.3
34	WOSU-TV, Columbus, OH	236	248.6
	DTV, Morgantown, WV, Ch. 33	59	<12 and >106
	DTV, Johnstown, PA	158	217.3
35	DTV, Cambridge, OH	110	217.3
36	WGPT, Oakland, MD	91	248.6
38	WLYJ, Clarksburg, Ch. 46	13	31.4
	DTV, Pittsburgh, PA	119	217.3
39	Pending Appl. Parkersburg, WV	105	248.6
	DTV, Charleston, WV	162	217.3
40	WPCB-TV, Greensburg, PA	119	248.3
41	DTV, Charlestown, WV	175	217.3
	DTV, Youngstown, OH	184	217.3
	WLYJ, Clarksburg, WV, Ch. 46	13	31.4
	WHTJ, Charlottesville, VA	227	248.6
42	WVPY, Front Royal, VA	181	248.6
43	DTV, Pittsburgh, PA	124	217.3
44	WOUC-TV, Cambridge, OH	110	248.6
45	WNEO, Alliance, OH	173	248.6
46	WLYJ, Clarksburg, WV	13	248.6
47	WKBS-TV, Altoona, PA	207	248.6
48	DTV, Pittsburgh, PA	120	217.3
49	DTV, Parkersburg, WV	105	217.3
50	DTV, Oak Hill, WV	176	217.3
	WLYJ, Clarksburg, WV, Ch. 46	13	31.4

*Using Section 73.610 criteria for analog to analog situations and Section 73.623 criteria for analog to DTV situations.

Davis Television Fairmont, LLC
Engineering Statement

Figure 1
Sheet 3 of 3

<u>Channel</u>	<u>Comment</u>	<u>Separation</u>	
		<u>Actual</u> (km)	<u>Required</u> <u>Minimum*</u> (km)
51	DTV, Pittsburgh, PA	107	217.3
52	DTV, Clarksburg, WV	14	217.3
53	WPGH-TV, Pittsburgh, PA	124	248.6
54	WLYJ, Clarksburg, WV, Ch. 46	13	31.4
	DTV, Oakland, MD	91	217.3
55	DTV, Oakland, MD, Ch. 54	91	<12 and > 106
	DTV, Hagerstown, MD	206	217.3
56	PRM, New Castle, PA	181	248.6
	Appl. Columbus, OH	238	248.6
57	DTV, Weston, WV, Ch. 58	38	<12 and> 106
58	DTV, Weston, WV	38	217.3
59	DTV, Weston, WV, Ch. 58	38	<12 and> 106
60	C.P. WWPX, Martinsburg, WV	196	248.6
61	WTSF, Ashland, KY	210	248.6
62	Possible, but first adjacency to land mobile set aside on Channel 63 is undesirable.		
63/64	Land mobile set aside		
65	Possible, but first adjacency to land mobile set aside on Ch. 64 is undesirable.		
66	Possible. See discussion in Engineering Statement		
67	C.P. WOAC, Canton, OH	206	248.6
68/69	Land mobile set aside		

*Using Section 73.610 criteria for analog to analog situations and Section 73.623 criteria for analog to DTV situations.

EXHIBIT B

SETTLEMENT AGREEMENT FOR CHANNEL 66, FAIRMONT, WEST VIRGINIA

[Certain exhibits omitted]

RETURN

LAW OFFICES
LEVENTHAL, SENTER & LERMAN P.L.L.C.

SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

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January 29, 1998

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*ADMITTED CA ONLY

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Settlement of Mutually Exclusive Applications for
Construction Permit on Channel 66, at Fairmont, West
Virginia
Davis Television Fairmont, LLC
(FCC File No. BPCT-960920IY)
Marri Broadcasting, L.P.
(FCC File No. BPCT-960920KS)

Dear Ms. Salas:

There is transmitted herewith one original and four copies of a Joint Request for Approval of Universal Settlement in the above referenced matter.

Please direct any questions concerning Davis Television Fairmont, LLC to the undersigned.

LEVENTHAL, SENTER & LERMAN P.L.L.C.

January 29, 1998

Page - 2 -

Please direct any questions concerning Marri Broadcasting, L.P. to:

James K. Edmundson, Esq.
1990 M Street, N.W., Suite 510
Washington, DC 20036

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ross G. Greenberg".

Ross G. Greenberg

Enclosures

cc w/encl.: James K. Edmundson, Esq.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In re: Applications of)	
)	
Davis Television Fairmont, LLC)	FCC File No. BPCT-960920IY
)	
Marri Broadcasting, L.P.)	FCC File No. BPCT-960920KS
)	
For a Construction Permit For A)	
New Commercial Television Station)	
On Channel 66, at Fairmont, West Virginia)	
To: Chief, Mass Media Bureau		

JOINT REQUEST FOR APPROVAL OF UNIVERSAL SETTLEMENT

Davis Television Fairmont, LLC ("Davis") and Marri Broadcasting, L.P. ("Marri") (each a "Party" and collectively, the "Parties"), pursuant to Section 73.3525 of the Commission's Rules, 47 C.F.R. § 73.3525, respectfully request that the Commission grant this Joint Request for Approval of Universal Settlement ("Joint Request"), approve the Settlement Agreement between the Parties dated as of January 28, 1998 and attached hereto (the "Settlement Agreement"), grant the above-captioned application of Davis, and dismiss the above-captioned mutually exclusive application of Marri. In support of this request, the following is shown:

1. This Joint Request proposes the dismissal of Marri's application, for the settlement payment specified in the Settlement Agreement, and the grant of Davis' application. Attached hereto as Exhibit 1 is a copy of the Settlement Agreement, and as Exhibit 2 are affidavits by each of the Parties setting forth the information required by Section 73.3525(a). Pursuant to Section

309(l) of the Communications Act of 1934, as amended (the "Act"),¹ the Commission must waive the restrictions on settlement payments to applicants dismissing mutually exclusive applications, relief which is respectfully requested,² and therefore this Joint Request may be granted and the Settlement Agreement approved.

2. The Settlement Agreement and this Joint Request are expressly contingent upon the Commission issuing an order or orders granting this Joint Request, approving the Settlement Agreement, granting Davis' application, and dismissing Marri's application, and such order or orders becoming final order or orders no longer subject to administrative or judicial review, reconsideration, or appeal. Accordingly, the parties request that the Commission adopt an order or orders taking such action or actions on the same date, and promptly issue public notice or notices of such actions thereafter.

3. As recognized by the Commission, the delays in processing pending mutually exclusive applications subject to the Commission's freeze on comparative proceedings,³ which

¹ See 47 U.S.C. § 309(l). Section 309(l) was added to the Act by Section 3002(a)(3) of the Balanced Budget Act of 1997.

² Section 309(l) states, in pertinent part, that the Commission shall "waive any provisions of its regulations necessary to permit [mutually exclusive applicants for new commercial television stations] to enter into an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the [Budget Act]." See 47 U.S.C. § 309(l). Therefore, the 180-day window began on August 5, 1997, when the legislation was signed into law and continues through February 1, 1998. The Parties respectfully request waiver of any other regulation or policy necessary to permit effectuation of this Settlement Agreement.

³ See FCC Freezes Comparative Proceedings, 9 FCC Rcd 1055 (1994); Modification of FCC Comparative Proceedings Freeze Policy, 9 FCC Rcd 6689 (continued...)

was imposed in light of the Bechtel⁴ decision, "have caused hardship to the applicants and also disserved the public interest by impeding the initiation of new broadcast services."⁵ Grant of this Joint Request would serve the public interest by conserving Commission resources in evaluating the mutually exclusive applications and, due to the comparative hearing freeze, by speeding the initiation of an additional new television broadcast service for Fairmont, West Virginia, and surrounding communities.

³(...continued)
(1994).

⁴ See Bechtel v. F.C.C., 10 F.3d 875 (D.C. Cir. 1993).

⁵ See Public Notice, FCC Waives Limitations on Payments to Dismissing Applicants in Universal Settlements of Cases Subject to Comparative Proceedings Freeze Policy, FCC 95-391 at 2 (released September 15, 1995).